



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dube Travel Agency & Tours, Inc.; Garber Travel

File: B-270438; B-270438.2

Date: March 6, 1996

Paul P. Murphy, Esq., Murphy & Coyne, for Dube Travel Agency & Tours, Inc.; Peter R. Chiesa, Esq., Wadleigh, Starr, Peters, Dunn and Chiesa, for Garber Travel. Judith A. Bonner, Esq., General Services Administration, for the agency. Katherine I. Riback, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision

DIGEST

1. Agency properly awarded contract to out-of-state firm where it was clearly stated that offerors would not be required to maintain an office in each state serviced and the awardee's proposal provided that it would establish an office in one of the states to be serviced.
2. Agency reasonably decided to reopen discussions and request a second round of best and final offers where it failed to advise a competitive range offeror during the first round of discussions of a deficiency in its proposal that rendered it unacceptable.
3. Agency's mathematical errors in the evaluation of the prior service evaluation factor do not provide a basis to sustain protests where, upon correction of the errors, it is clear that the protesters were not prejudiced.

DECISION

Dube Travel Agency & Tours, Inc. and Garber Travel protest the General Services Administration's (GSA) award of a contract to Travel Centre for the establishment and operation of a travel management center for the states of Maine and New Hampshire under request for proposals (RFP) No. 3FBG-W-AO-N-5199. Dube and Garber assert that Travel Centre's proposal should have been rejected because Travel Centre is an out-of-state firm, that the agency failed to engage in meaningful discussions, that the agency improperly conducted a second round of discussions and request for best and final offers (BAFOs), that Travel Centre will be unable to comply with the solicitation requirements, and that the agency erred in evaluating the offerors' prior service.

We deny the protests.

BACKGROUND

On March 30, 1995, GSA announced its intention to conduct this procurement by publishing a notice in the Commerce Business Daily (CBD), stating:

"This procurement is for Travel Management Center (travel agency) services for three States: Maine, Vermont and New Hampshire. . . . Responsible offerors will be located in and service the Federal agencies from one of these States. One, two or three contracts may result from the award of this solicitation. In other words, an offeror in Maine may receive a contract to service New Hampshire and Vermont, and an offeror in Vermont may receive a contract to service Maine (in this scenario, two contracts are awarded)."

On April 21, the agency issued the RFP as a total small business set-aside. Consistent with the CBD notice, the RFP provided that the agency was seeking proposals for the establishment and operation of a travel management center for the states of Maine, New Hampshire, and Vermont, and advised offerors that "this solicitation may result in one (1), two (2), or three (3) award(s)."¹ The solicitation further stated that "the offeror must be located in, or be willing to physically relocate to, a servicing office in the geographic area to be serviced."

Regarding evaluation of proposals, section M of the RFP established three evaluation factors: basic requirements,² prior service,³ and enhancements. The RFP provided that basic requirements would be evaluated on a pass/fail basis, that prior service and enhancements would be weighted equally, and that award(s) would be made on the basis of the proposal that met all the basic

¹Section H of the RFP listed each of the federal agencies within the three states to be serviced, identifying each of the states as "items" for which proposals were to be submitted. Although the RFP contemplated that award could be made for more than one item/state, the solicitation also provided, "award of one item may not be qualified by award of another item."

²The basic requirements identified were project management, personnel, quality control plan, implementation, outgoing transition requirement, commercial accounts, rebate/concession fee, and product line mix.

³Section L required offerors to list all current GSA accounts nationwide, as well as current corporate or government accounts that were similar in size and scope to the pending contract.

requirements and received the highest combined rating for prior service and enhancements.

Regarding the evaluation of prior service, section M provided that the offerors' customers would be queried with regard to the offerors' "telephone response time, timeliness of ticket delivery, knowledge and courtesy of personnel, responsiveness in resolving problems, and overall quality of service." Sections C and L of the RFP established three categories of possible enhancements: (1) those which provide a cost savings to the government (for example free or reduced fee surface transportation to or from ports of debarkation/embarkation, free or reduced fee parking at ports of debarkation/embarkation, and free passport photos); (2) those which provide additional benefits or services to travelers and/or the government (for example, free flight insurance, free passport/visa service, or free baggage tracking service); and (3) additional rebate beyond that required. The RFP stated that proposed enhancements would be scored on the basis of perceived value to the government, and that enhancements providing a cost savings to the government would constitute 60 percent of the weight accorded enhancements, that service enhancements would constitute 30 percent, and additional rebates beyond that required would constitute 10 percent.

Four proposals were received by the May 24 closing date. Garber, a New Hampshire firm, proposed to establish a travel management center only for New Hampshire. Dube, a Maine firm, proposed to establish a travel management center only for Maine. Travel Centre, a Massachusetts firm, proposed to establish a travel management center for New Hampshire, Maine and Vermont, stating in its proposal that it intended to establish an office in Portsmouth, New Hampshire, to provide this service. Travel Centre's initial proposal also stated that its offer was contingent on receiving an award for all three states.

Following evaluation of initial proposals, the agency established a competitive range for the state of New Hampshire, which included only the proposals of Garber and Travel Centre, and a competitive range for the state of Maine which included only the proposals of Dube and Travel Centre. By letters dated August 10, the agency conducted discussions with each offeror and requested the submission of BAFOs by August 23.

Upon submission and review of BAFOs, the agency realized that it had failed to discuss a deficiency in Travel Centre's proposal--specifically, the provision making its offer contingent upon receipt of an award for all three states. As noted above, the solicitation precluded such contingencies. Additionally, the agency was concerned that during the first round of discussions it had not identified with sufficient specificity the enhancements proposed by each offeror which the agency considered to be of little or no value. Accordingly, by letters dated October 10, the agency reopened discussions with all offerors. In those letters, each offeror was

advised of specific enhancements it had proposed which the agency considered to be of little or no value. Travel Centre was also advised of the unacceptable contingency contained in its proposal. The agency requested submission of second BAFOs by October 11.

In its second BAFO, Travel Centre removed the unacceptable contingency. Following review and evaluation of the proposals, the agency determined that Travel Centre had offered the best value to the government with regard to the States of Maine and New Hampshire.⁴ These protests followed.

DISCUSSION

Physical Location in the Area to be Serviced

Dube and Garber first protest that the agency should have awarded individual contracts for Maine and New Hampshire, respectively, and that award to Travel Centre was improper because at the time proposals were submitted it did not maintain an office in either Maine or New Hampshire.

To the extent the protesters are challenging the solicitation provisions which permitted consideration of proposals from firms not physically located within each state or the provisions permitting an award for one or more states, the protests are not timely filed. Our Bid Protest Regulations require that protests based on alleged solicitation improprieties which are apparent prior to the closing time for receipt of initial proposals must be filed prior to that time. Section 21.1(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

Here, the agency clearly advised offerors of its intention to award one or more contracts covering the three states and specifically stated that offerors need not maintain offices in each state. As discussed above, the agency's CBD notice specifically stated:

"This procurement is for Travel Management (travel agency) services for three states: Maine, Vermont and New Hampshire. . . . Responsible offerors will be located in and service the Federal agencies from one of these States. . . . In other words, an offeror in Maine may receive a contract to service New Hampshire and Vermont. . . ." (Emphasis added.)

⁴Another firm received a contract to establish and operate a travel management center in Vermont. That contract is not at issue here.

Consistent with this notice, the solicitation clearly stated, "the offeror must be located in, or be willing to physically relocate to . . . the geographic area to be serviced."⁵ Accordingly, to the extent the protesters are challenging the provisions of the solicitation, the protests are untimely.

To the extent the protesters are asserting that Travel Centre's proposal failed to comply with the solicitation requirement that "the offeror must be located in, or be willing to physically relocate to . . . the geographic area to be serviced," the record is to the contrary. In its proposal, Travel Centre specifically proposed to establish an office in Portsmouth, New Hampshire—that is, within the geographic area contemplated by the solicitation and for which the contract was awarded. On this record, we find no merit in the protesters' assertions that Travel Centre's proposal failed to comply with the solicitation requirements regarding physical location.

Delivery Requirements

Dube and Garber next protest that Travel Centre will be unable to comply with various delivery requirements contained in the solicitation, including requirements that an offeror provide ticket delivery at least twice daily to all ticket delivery points and provide a 2-hour emergency service to appropriate airports in Maine and New Hampshire.

Whether Travel Centre will successfully perform its obligations under the contract involve matters of contract administration and/or the agency's affirmative determination of Travel Centre's responsibility, neither of which is properly for our consideration. See, e.g., TRS Design & Consulting Servs., B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168; GTE Customer Networks, Inc., B-254692.2, Feb. 24, 1994, 94-1 CPD ¶ 143. To the extent the protesters are asserting that Travel Centre's proposal failed to offer to comply with the solicitation requirements, the record is again to the contrary.

Travel Centre's proposal specifically stated that it would provide delivery to all local delivery points and, for non-local points requiring ticket delivery, stated that Travel Centre would utilize electronic ticketing through machines located throughout the service area, along with courier pick-up and delivery. Travel Centre further proposed that it would provide ticket delivery for emergency pre-paid tickets at an appropriate airport within two hours notice by hand-writing a prepaid ticket advice, calling the airline directly, and providing it with the necessary information for it to

⁵The definitions section of the solicitation defined "geographic area to be served" as "the geographic area(s) as outlined in Section H." Section H listed each of the federal agency locations for which travel services was to be provided in all three states.

issue the ticket at the airport of departure. On this record, Travel Centre clearly proposed to comply with the solicitation requirements.⁶

Second Request for BAFOs

Dube and Garber next protest that it was improper for the agency to reopen discussions and request a second round of BAFOs. As discussed above, the agency explains that the second round of discussions and BAFOs was necessitated by its failure to identify a deficiency in Travel Centre's proposal during the earlier discussions and to ensure that the agency had adequately identified various enhancements proposed by each offeror which the agency considered to be of limited value.

In order for discussions to be meaningful, an agency must lead offerors into areas of their proposals which require correction or amplification. Federal Acquisition Regulation (FAR) § 15.610; Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. Pursuant to that requirement, the agency concluded it had an obligation to identify the deficiency existing in Travel Centre's proposal, and that its failure to do so would render either its subsequent award to Travel Centre or its subsequent rejection of Travel Centre's proposal vulnerable to a legal challenge. We see nothing unreasonable in the agency's ultimate decision to remedy its earlier oversight through a second round of discussions and request for BAFOs. See Systems & Defense Servs. Int'l., B-254254.2, Feb. 9, 1994, 94-1 CPD ¶ 91; HLJ Management Group, Inc., B-225843.3, Oct. 20, 1988, 88-2 CPD ¶ 375, aff'd, B-254254.2, Feb. 9, 1994, 94-1 CPD ¶ 91.⁷

⁶Garber and Dube also complain that the format of Travel Centre's proposal failed to comply with the solicitation requirement that proposals address each item/state separately. The agency responds that RFP amendment No. 1 specifically instructed offerors to address in one section information which would otherwise be duplicated in response to each item and then, to the extent that there was unique or item-specific information, to address this information separately. Thus, the solicitation did not prohibit one response that encompassed various items.

⁷Both Dube and Garber also object to the short period of time allowed by the agency for the second submission of BAFOs. Generally, to be timely under our Bid Protest Regulations, a protest of a solicitation impropriety which is incorporated into a solicitation by amendment must be protested not later than the next closing time for receipt of proposals following the incorporation. Section 21.2(a)(1), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(1)). In cases where a solicitation amendment was not received until 1 day before proposals were due, we have held that the protester did not have a reasonable opportunity to file its protest before the due date, and have applied the timeliness rule which provides that

Meaningful Discussions

Garber challenges the nature of discussions conducted with it by the agency. Specifically, Garber asserts that the discussions were not meaningful in that the agency failed to advise Garber that its "enhancements were somehow deficient in either of the BAFO requests." The record belies Garber's assertion.

In the agency's letter to Garber dated October 10, the agency specifically identified seven particular enhancements Garber had proposed which the agency had evaluated as having little or no value to the government.⁸ In that letter, the agency specifically noted that one of the bases for the agency's low evaluation of the proposed enhancements could be that Garber had failed to fully describe the enhancements or had presented them in a manner that was too vague to be understood.

Here, the agency's identification of Garber's specific enhancements which the agency considered to be of limited value adequately advised Garber of the areas within its proposal which required amplification. Given that GSA may not have even been required to advise Garber of which enhancements were of limited value, see Holmes & Narver, Inc., B-266246, Jan. 10, 1996, 96-1 CPD ¶ ___, we find that Garber's assertion that the agency failed to conduct meaningful discussions in this area is without merit.

Evaluation of Prior Service

Finally, Dube and Garber assert that the agency failed to properly evaluate proposals with regard to the offerors' prior service. As discussed above, the RFP instructed offerors to provide the agency with contacts for all current GSA accounts nationwide, and current corporate accounts that were similar in size and scope to the subject contract. The RFP stated that the agency would contact up to a

protests based on matters other than solicitation improprieties must be filed within 14 days after the protester knew or should have known of the basis for protest. Section 21.2(a)(2), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(2)); The Big Picture Co., B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166. Here, Dube failed to raise this issue until November 2; Garber failed to raise the issue until November 3. That is, neither protester challenged the period for submitting second BAFOs until more than 14 days after the agency's October 10 request. Accordingly, the issue is not for consideration.

⁸In light of the proprietary nature of this information, our decision does not disclose the specific enhancements identified.

maximum of five of the customers listed and evaluate the offerors' prior performance based on the input received from the identified customers.⁹

The record shows that the agency's evaluation of prior service contained certain mathematical errors. However, correction of the agency's mathematical errors clearly demonstrates that there was no prejudice to either protester.

As discussed above, the solicitation provided that award would be made based on the proposal that met all the basic requirements and received the highest combined rating for prior service and enhancements. Following the final BAFO submission, each of the offerors was evaluated as meeting the basic requirements. Travel Centre's total evaluated score was 85.5 points (49 for prior service and 36.5 for enhancements). Dube's total evaluated score was 67.5 points (36.5 for prior service and 31 for enhancements). Garber's total evaluated score was 67 points (39 for prior service and 28 for enhancements).

In evaluating the offerors' prior service, the agency received responses from five Travel Centre references, four Garber references, and four Dube references. The evaluators intended to total the raw scores applicable to each offeror and divide the total by the number of references received. Consistent with that approach, the agency totaled Travel Centre's total raw point scores for prior service (246 points from five references) and divided by 5, to obtain a prior service rating of 49. The agency similarly divided Garber's and Dube's total raw point scores for prior service (170 and 195 respectively) by 5—even though only four references for each were received. Thus, the agency erroneously calculated Dube's prior service rating to be 36.5 and Garber's prior service rating to be 39.¹⁰

The agency has reviewed the record and recalculated the scores, dividing Dube's and Garber's scores by four rather than five. After correcting the mathematical errors, the record shows that Dube's prior service rating should have been 42.5 and Garber's prior service rating should have been 49. Adding these corrected scores to

⁹Dube challenges the RFP's stated method for evaluating prior service, asserting that it amounts to a "popularity contest" and lacks objective standards. Again, this aspect of the protest is not timely raised in that it challenges a solicitation provision which was apparent prior to submission of proposals. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to that closing time. Section 21.1(a)(1), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(1)); Engelhard Corp., supra.

¹⁰With regard to Dube's rating, the record also indicates the agency erroneously concluded that 170 divided by 5 equals 36.5, rather than 34.

the applicable enhancement ratings, changes Dube's total evaluated score to 73.5 and Garber's to 77. Both scores are still significantly lower than Travel Centre's total evaluated score of 85.5 points.¹¹

Prejudice is an essential element of a viable protest; consequently, we will not sustain protests against alleged evaluation errors unless the protesters are somehow prejudiced. See Square 537 Assocs. Ltd. Partnership, B-249403.2, Apr. 21, 1994, 94-1 CPD ¶ 272. Here, even after the evaluation errors are corrected, the record shows that Travel Centre would still have received the contract for Maine and New Hampshire since it submitted the highest-ranked proposal for each state. Accordingly, we see no basis to conclude that Dube or Garber was prejudiced by the agency's evaluation errors.

The protests are denied.

Comptroller General
of the United States

¹¹Dube and Garber also complain that two of the five Travel Centre references were customers that were not current at the time proposals were submitted. However, if these two references are eliminated from the calculation, Travel Centre's prior service score does not decrease.